

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
COLUMBIA, SOUTH CAROLINA

#19-11783

JUNE 12, 2019

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SOUTH CAROLINA SOLAR BUSINESS ALLIANCE, INC. – *Request for an Allowable Ex Parte Briefing to Discuss the South Carolina Energy Freedom Act: An Overview and Next Steps*

**ALLOWABLE EX PARTE  
BRIEFING**

**COMMISSION MEMBERS PRESENT:** Comer H. ‘Randy’ RANDALL, *Chairman*; Justin T. WILLIAMS, *Vice Chairman*; and COMMISSIONERS John E. ‘Butch’ HOWARD, Florence P. BELSER, Thomas J. ‘Tom’ ERVIN, Swain E. WHITFIELD, and G. O’Neal HAMILTON

**ADVISOR TO COMMISSION:** Joseph Melchers  
GENERAL COUNSEL

**STAFF:** David W. Stark, III, Esq., and Jerisha Dukes, Esq., Legal Advisory Staff; Douglas K. Pratt and William O. Richardson, Technical Advisory Staff; Jackie Thomas, Information Technology Staff; Melissa Purvis, Livestream Technician; Jo Elizabeth M. Wheat, CVR-CM/M-GNSC, Court Reporter; and Hope Adams, Hearing Room Assistant

**APPEARANCES:**

***RICHARD L. WHITT, ESQUIRE***, representing SOUTH CAROLINA SOLAR BUSINESS ALLIANCE, together with ***BRET SOWERS*** [Principal & Vice President / Southern Current; Chairman / SC Solar Business Alliance], ***HAMILTON DAVIS*** [Director, Regulatory Affairs / Southern Current], and ***STEVE LEVITAS*** [Senior Vice President, Government & Regulatory Affairs / Cypress Creek Renewables], Presenters

***JEFFREY M. NELSON, ESQUIRE***, Designee of the Executive Director of THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF

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Please note the following inclusions/attachments to the record:

- Presentation Slides

P R O C E E D I N G S

**CHAIRMAN RANDALL:** Please be seated. Okay.

We want to welcome everyone to this afternoon's allowable ex parte. I'll ask Mr. Melchers to read the docket.

**MR. MELCHERS:** Thank you, Mr. Chairman.

We are here pursuant to a request for an allowable ex parte communication briefing, which is scheduled for today, June 12th, here in the Commission's hearing room.

The requestor is Attorney Richard Whitt, representing the South Carolina Solar Business Alliance, Inc., and the topic for the briefing today is "The South Carolina Energy Freedom Act: An Overview and Next Steps."

Thank you, Mr. Chairman.

**CHAIRMAN RANDALL:** Thank you, Mr. Melchers.

Welcome, Mr. Whitt.

First, I think we need to get to Mr. Nelson to give us his detailed instructions on the allowable ex parte procedure.

**MR. NELSON:** Thank you, Mr. Chairman.

Good afternoon, everybody. For those of you that don't know me, I'm Jeff Nelson. I'm the Chief Legal Officer for the Office of Regulatory Staff,

1 and I'm here today as the designee of the Executive  
2 Director of the Office of Regulatory Staff.

3 The ex parte this afternoon has been noticed  
4 to be presented by the South Carolina Solar  
5 Business Alliance, and it needs to be conducted in  
6 accordance with the provisions of South Carolina  
7 Code Annotated Section 58-3-260.

8 As the ORS representative, it's my duty to  
9 certify that the record of this proceeding – I need  
10 to certify it to Ms. Boyd, the Chief Clerk over  
11 here at the PSC, within the next 72 hours and  
12 verify that it was conducted in accordance with the  
13 provisions of the statute.

14 The requirements of that statute are, in part,  
15 that the allowable ex parte be confined to the  
16 subject matter which has been noticed. In this  
17 case, the issued-notice topic is "The South  
18 Carolina Energy Freedom Act: An Overview and Next  
19 Steps." Therefore, I ask the presenters,  
20 Commissioners, and the Commission Staff refrain  
21 from addressing anything outside the parameters of  
22 that. It's a pretty broad parameter, though.

23 Under 58-3-260, participants, Commissioners,  
24 and Commission Staff are prohibited from  
25 requesting or giving any commitment,



1           predetermination, or prediction, regarding any  
2           action by any Commissioner as to any ultimate or  
3           penultimate issue which either is before or is  
4           likely to come before the Commission. In short,  
5           the presenters cannot ask the Commissioners for an  
6           opinion or a decision on anything, and, in the same  
7           manner, the Commissioners cannot give any such  
8           opinion.

9           We'd ask the presenters, Commissioners, and  
10          Commission Staff refrain from referencing any  
11          reports, articles, or documents that you haven't  
12          included in the slide presentation today, because,  
13          if you do, we need to track that down within the  
14          next 48 hours so that we can make the filing.

15          The only other thing I have left is everybody  
16          that is here is required to sign an attendance  
17          roster. You should have signed when you came in,  
18          and you should've received a form. Please make  
19          sure you actually read the form, sign the form, and  
20          turn it back in before you leave today. If you  
21          don't, we're going to have to try and track you  
22          down, which we've done before and that takes a lot  
23          of time, so please make sure you turn it in before  
24          you leave today.

25          That's all I have, Mr. Chairman.

1                   **CHAIRMAN RANDALL:** Thank you, Mr. Nelson.

2                   Okay. Mr. Whitt, welcome.

3                   **MR. WHITT:** Thank you, Mr. Chairman. Let's  
4 see, is this [indicating] on? Yeah.

5                   We want to thank you, Mr. Chairman, and  
6 members of the Commission, for allowing us to have  
7 this briefing today. The South Carolina Solar  
8 Business Alliance appreciates it. It's time for  
9 you, it's extra work for your Staff, and we  
10 appreciate it. And Jo Wheat, it's extra work for  
11 her, so we want to thank Jo Wheat. It's extra work  
12 for Jeff Nelson, and we appreciate his  
13 participation; we want to thank him for that.

14                  Mr. Chairman, can I have your permission to  
15 introduce some of my solar clients in the audience?

16                  **CHAIRMAN RANDALL:** Sure.

17                  **MR. WHITT:** Okay. We have Peter Stein here,  
18 with Cypress Creek. We've got Alexandria  
19 Hernandez, from NCRE. We have James Shaifer, from  
20 NCRE. We've got Harry Walling, from NCRE. And we  
21 have Paul Esformes, from Ecoplexus. And we have  
22 Andrew Berrier, from Pine Gate, and he has several  
23 legal interns with him here, also.

24                  **CHAIRMAN RANDALL:** Welcome, everyone.

25                  **MR. WHITT:** Mr. Chairman, if I can put on the

1 record, as I always must, that we have attorneys  
2 participating on the panel here today, that are  
3 here as subject-matter experts or officers of their  
4 solar-developer companies; they're not appearing as  
5 attorneys today. I'm the only one representing the  
6 Solar Business Alliance.

7 Mr. Chairman, if you're ready, I can introduce  
8 the panel?

9 **CHAIRMAN RANDALL:** Yes, sir.

10 **MR. WHITT:** All right. We have Bret Sowers,  
11 who will begin the presentation, and he's with  
12 Southern Current, as a vice president, but he's  
13 also the Chairman of the South Carolina Solar  
14 Business Alliance.

15 In the middle, we have Hamilton Davis, who is  
16 head of regulatory affairs for Southern Current.

17 And we have Steve Levitas, who is a senior  
18 vice president and heads up regulatory affairs for  
19 Cypress Creek.

20 All three have appeared in front of you  
21 before, and we appreciate this opportunity today.

22 [Reference: Presentation Slide 1]

23 **CHAIRMAN RANDALL:** Thank you.

24 Welcome. Welcome back. Okay, we'll turn it  
25 over to you.

1                   **MR. BRET SOWERS [SOUTHERN CURRENT/SC-SBA]:**

2                   Mr. Chairman and Commissioners, my name is Bret  
3                   Sowers. As Richard has said, I am a principal at  
4                   Southern Current. We're based here in South  
5                   Carolina, as some of you know, down in Charleston,  
6                   currently employing over 130 people in the State  
7                   and operating in around 10 different states now.  
8                   But today I'm before you as the Chairman of the  
9                   South Carolina Solar Business Alliance. I've  
10                  served as chairman for the past two years and have  
11                  been on the board, I think, for over four.

12                 And so I'm just going to start off with some  
13                 brief remarks on the solar industry in South  
14                 Carolina today and, really, leave it to the great  
15                 minds to my right on some of the – the Act itself  
16                 and what's within it

17                                 [Reference: Presentation Slide 2]

18                 So, the first slide, really wanted to talk  
19                 about just a reintroduction of who the South  
20                 Carolina Solar Business Alliance is. As you are  
21                 aware, we intervene in a lot of different dockets,  
22                 but I think it's important, as an organization, for  
23                 you to understand who we're representing.

24                 So, we were founded in 2009. Consecutively  
25                 over the past years, we've always represented a

1 little over 30 companies. It varies year-by-year,  
2 but 30 different companies that we represent. Our  
3 primary focus is on legislative activities, like  
4 the Energy Freedom Act, and regulatory activity in  
5 front of you all.

6 A diverse group of companies and interests  
7 within our organization. And as I've listed here,  
8 you know, rooftop solar mainly serving residential  
9 customers, commercial and industrial focus for  
10 developers, large-scale solar developers as well,  
11 like solar farms that you're seeing. We have a  
12 host of manufacturers that are making what we call  
13 racking, which is steel or aluminum that's  
14 supporting the solar panels, or the electrical  
15 equipment, wiring – manufacturers, that are really,  
16 some, located here in the State and others are  
17 national companies that you all would recognize and  
18 know very well, that have a footprint across the  
19 US – installers, and financiers. So a really  
20 diverse group kind of helps form our take on what  
21 we're pursuing, regulatory or otherwise.

22 In 2018, three of our members' companies were  
23 voted as some of the fastest-growing companies in  
24 the State of South Carolina. Southern Current, the  
25 company I work for, we were voted as the number one

1 fastest growing company in the State, for the large  
2 business category. Hannah Solar Government  
3 Services, also located down in Charleston, was  
4 number two in the small business category; and  
5 Alder Energy, number seven in the small business  
6 category.

7 So the solar industry and the companies are  
8 growing and becoming an integral part of the  
9 community and the State.

10 [Reference: Presentation Slide 3]

11 One of the things that we keep a keen focus on  
12 is the economic benefits of what we do, and we're  
13 very integral into economic development at the  
14 State and local level with all of the investments  
15 that we're making. So, I showed this slide, I  
16 believe, Mr. Chairman, last time I was here, and  
17 decided not to really update this because the  
18 numbers haven't really changed significantly since.  
19 But what I laid out was the footprint of our member  
20 companies across the US, and took a step further to  
21 show you the amount of megawatts at the time that  
22 had been executed with the electrical utilities in  
23 the State, and the total planned investment. And I  
24 believe it was Commissioner Whitfield, who was  
25 specific to ask about the \$5 billion number and the

1 amount of time in which we anticipated that to come  
2 to fruition. And I extrapolated out job wages and  
3 property tax revenue. And I'll go in a little bit  
4 further to the property tax revenue in another  
5 slide.

6 But just really wanted to give the Commission  
7 a breadth of understanding mainly to that last  
8 bullet point, of those four bullet points on the  
9 right, that a lot of our companies that we  
10 represent and those here on the panel today, we  
11 work in regulated and unregulated markets across  
12 all jurisdictions, appear in front of various  
13 public service commissions and various different  
14 legislatures. And so what we hope to bring to this  
15 Commission and to the State is an understanding of  
16 how other states are doing it, how other markets  
17 are handling some of the complex issues that you  
18 all are going to be tasked, certainly, with  
19 understanding with this Act.

20 [Reference: Presentation Slide 4]

21 Economic development, as I said, is a key  
22 aspect of what we do. I ran some numbers recently  
23 from the Department of Commerce's website of the  
24 announcements that they make. And so, since 2015,  
25 nearly \$2 billion of new announcements for solar

1 projects in the State of South Carolina. And that  
2 was across 19 different counties with 12 different  
3 solar companies or solar-related companies, and  
4 that was for about 1500 megawatts of new solar  
5 projects. Now, those were announcements; some of  
6 those have been built, some of those are under  
7 construction now and some of those are still in the  
8 process of going through all of the planning and  
9 due diligence. But nearly all of those investments  
10 were made by Solar Business Alliance members: 1200  
11 megawatts of the 1500. So I just wanted to make  
12 that note, that from an association and  
13 organization standpoint, we really do represent the  
14 majority of the solar interests in South Carolina.

15 [Reference: Presentation Slide 5]

16 To give you an idea of what the economic  
17 development impacts are, this was a recent  
18 announcement in Darlington: \$140 million of  
19 investment for – multiple projects were bundled in  
20 that \$140 million, but it kind of gives you an idea  
21 of how you get to a \$5 billion planned investment  
22 for the State.

23 And the fee-in-lieu agreements, which is the  
24 property tax agreements that are negotiated with  
25 those counties, dictate kind of the property tax



1 revenue and other benefits that those taxes are  
2 going to benefit through the county. And so, just  
3 to show you what \$140 million looks like, from an  
4 annual basis, that's \$421,000 a year that's going  
5 to be paid to the county for those projects, for  
6 the next 10 years. And then it steps down a little  
7 bit for years 11 through 30. So you can start kind  
8 of doing the math, and every county has the ability  
9 to negotiate how they do these agreements. But as  
10 you start doing the math, you can start coming up  
11 with what does a \$5 billion investment in solar  
12 facilities across South Carolina look like, from a  
13 local level, and what can these counties do with  
14 these funds, these discretionary dollars, and where  
15 is that next investment going, and coming from.  
16 And you see it in a lot of the rural counties in  
17 our State that really haven't seen a lot of  
18 investment in recent years.

19 [Reference: Presentation Slide 6]

20 I want to spend a little bit of time real  
21 briefly on just industry trends that, as an  
22 organization, we're working on. And these aren't  
23 specific to South Carolina; some of these you're  
24 familiar with, but we're talking about them locally  
25 and in DC and in other areas.

1           So, price is a big driver of why the solar  
2           industry has become successful in recent years. It  
3           depends on the reports you're looking at, but, you  
4           know, 80 percent reduction in price over the last  
5           10 years. Certainly, aware of the avoided cost  
6           rates and how solar has been able to meet or beat  
7           those rates in recent years.

8           The growth of the industry and jobs, I think  
9           the last jobs report was, you know, well over  
10          150,000 workers across the US are employed through  
11          the solar industry, and that spans heavily into  
12          manufacturing. We have a large manufacturing base  
13          to supply what we are doing on the ground.

14          Diversity is a large issue. I would say for  
15          not only the solar industry, but I think the  
16          electric industry in total, there's a lot to be  
17          done on diversity inclusion within multiple  
18          industries. And as the solar industry is one of  
19          the fastest-growing growth segments in the US  
20          economy, a focus on diversity and making sure we're  
21          paying attention to a new generation of workforce,  
22          as we are a new generation of companies in many  
23          ways, as well.

24          Storage, and that comes in various different  
25          forms, but a high priority for the industry and a

1 lot of discussion. The ITC, as many of you know,  
2 is the investment tax credit that the federal  
3 government supplies to renewable projects. The  
4 wind industry has a production tax credit; the  
5 solar industry has an investment tax credit.  
6 There's a phase-out of those tax credits over the  
7 next few years, and so there's an active discussion  
8 about how that affects price and how we're meeting  
9 those contracts in the future.

10 And then security is a rising concern, I  
11 think, across the electric industry, and that  
12 certainly affects what we do in the solar industry,  
13 as we are heavily interconnected to the utility,  
14 and ensuring that we are meeting or exceeding  
15 security – cybersecurity – issues that are coming  
16 up. So, active conversations that we're engaged  
17 with locally and at the State and federal, so  
18 really just wanted to bring those to your  
19 attention.

20 [Reference: Presentation Slide 7]

21 I believe that's going to conclude what I'm  
22 going to talk about. I'm going to hand it over to  
23 Hamilton Davis, but before I do, we have done a  
24 couple of these ex partes, I believe, in the past,  
25 Mr. Chairman, and we're certainly open at any time,

1 should you want to ask questions. Interrupt, stop  
2 us, obviously at your discretion, but we're just  
3 going to go with the flow.

4 **CHAIRMAN RANDALL:** Thank you.

5 **MR. BRET SOWERS [SOUTHERN CURRENT/SC-SBA]:**

6 Yeah, thank you.

7 **CHAIRMAN RANDALL:** We'll probably try to hold  
8 the questions until the end, if we can.

9 **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** Thank  
10 you, Mr. Chairman, and members of the Commission.  
11 It's good to be back in front of you. A few things  
12 have changed since we talked last time: New  
13 Commissioner Belser, welcome. It's good to see you  
14 here.

15 And, obviously, a very complicated and  
16 comprehensive piece of legislation that we're going  
17 to do our best to simplify and talk about our ideas  
18 for how this legislation gets implemented, what we  
19 might see over the coming months, coming years. I  
20 know I have to be careful, not make any requests.  
21 These are the opinions of the SBA that I'm sharing  
22 with you. And, Mr. Chairman, of course it's at  
23 your discretion when questions get asked, but, as I  
24 watched the briefing from Staff two weeks ago and  
25 was here for the briefing today, and I know having

1 not been there in the room for the last year, as a  
2 lot of parties have been thinking about nothing but  
3 this – this has consumed a lot of my life for the  
4 last 365 days – think of us as a resource today,  
5 and please ask us where there's confusion, where  
6 there's uncertainty around some of these  
7 expectations.

8 And, you know, given how complicated this  
9 legislation is, of course, we're not going to be  
10 able to get into all those details and all the  
11 weeds, but I'm going to hit some high points and  
12 things that we see as priorities that are on the  
13 near horizon, things like avoided costs, and stick  
14 with that level of discussion.

15 I do want to just start by complimenting the  
16 stakeholder involvement process that pulled this  
17 legislation together. Of course, it wasn't just  
18 the solar industry; it was the utilities,  
19 commercial and industrial interests, the  
20 conservation community, and then ORS played a very  
21 important key role in bringing the stakeholders  
22 together last summer, and then also being there for  
23 the Legislature as a resource, making sure they  
24 were making the right decisions and getting a fair  
25 third-party perspective on how these policies would

1           unfold.

2           And what it led to was, again, a unanimous  
3           vote by our Legislature – 103 to nothing, in the  
4           House; 46 to nothing, in the Senate – and then the  
5           signing by our Governor. So, that happened with  
6           Act 236, as well. So it's pretty impressive this  
7           State has put together two comprehensive pieces of  
8           legislation and gotten that level of support, and  
9           it's a testament to the folks at the table being  
10          committed to making it successful.

11          This legislation is already being viewed as  
12          somewhat of a model for the Southeast, and I think  
13          it – the proof will be in the pudding. If we  
14          implement this in the way it was envisioned, it  
15          will indeed be a signpost for others to follow.

16                   [Reference: Presentation Slide 8]

17          So, I want to start by just going through some  
18          of the themes of this legislation, as we see them.  
19          These are – I pulled some quotes directly from the  
20          statute that illustrate what we think are the main  
21          focal points of Act 62, starting with consumer  
22          choice and solar expansion. This legislation is  
23          very focused on both of these. The quote I've  
24          selected, the language I've selected, is, "It is  
25          the intent of the General Assembly to expand the

1 opportunity to support solar energy and to support  
2 access to solar energy options for all South  
3 Carolinians..." And I think the breadth and  
4 inclusory nature of the legislation speaks to those  
5 points.

6 [Reference: Presentation Slide 9]

7 Consumer protection is also front and center,  
8 throughout. Every single section you read will  
9 have a reference to the public interest and  
10 protecting ratepayers. This is just one example of  
11 that: "The General Assembly finds that there is a  
12 critical need to...protect customers from rising  
13 utility costs...[and] provide opportunities for  
14 customer measures to reduce or manage electrical  
15 consumption from electrical utilities..."

16 [Reference: Presentation Slide 10]

17 Transparency and accountability. Opening up  
18 some of those black boxes that have existed in some  
19 of the dockets that our industry has been involved  
20 in in the past, making sure data and assumptions  
21 and information is being made available to all  
22 parties, so that we can be confident that the right  
23 decisions are being made. This is an example from  
24 the – from, actually, the IRP: "Each electrical  
25 utility's avoided cost filing must be reasonably

1 transparent so that underlying assumptions, data,  
2 and results can be independently reviewed and  
3 verified...”

4 [Reference: Presentation Slide 11]

5 And then finally – or, not finally, but also,  
6 competition. This is – with consumer choice comes  
7 different options for where power comes from, how  
8 it’s being produced, and introducing competition in  
9 the form of commercial/industrial programs, making  
10 sure our avoided costs are accurate, and allowing  
11 PURPA to work in this State, creating opportunities  
12 for competitive solicitation, and “The Commission  
13 shall treat small power producers on a fair and  
14 equal footing with electrical utility-owned  
15 resources...”

16 [Reference: Presentation Slide 12]

17 And then, I think equally as important for  
18 purposes of today is Commission empowerment is also  
19 front and center. One of the conversations we had  
20 with staff and the Legislature throughout this  
21 process was both setting new guidance for the  
22 issues that are included here, but also making sure  
23 the Commission understood that a lot of these  
24 decisions will be at your discretion. This is a  
25 different approach, I think, than we’ve seen in the



1 past where there's been a heavy expectation that  
2 the Legislature is – if they haven't told you to do  
3 something, then you shouldn't necessarily do it. I  
4 think this opens the door for a different type of  
5 engagement on these issues, and you'll see that as  
6 you look at the actual language of the statute.  
7 This is just one example: "The Commission is  
8 authorized to employ, through contract or  
9 otherwise, third-party consultants and experts in  
10 carrying out its duties...[and] is exempt from  
11 complying with the State Procurement Code in the  
12 selection and hiring of a third-party-expert..."

13 That's particularly important, I think, with  
14 avoided cost, where there's actually a requirement  
15 that a third-party expert be used, but the fact  
16 that you have streamlined access to expertise to  
17 double-check what we tell you and what the  
18 utilities tell you, I think, is going to prove  
19 useful and valuable.

20 [Reference: Presentation Slide 13]

21 Definitely not going to spend a whole lot of  
22 time on this slide, as I know you've heard from  
23 Staff and they've been doing an excellent job of  
24 updating you on what's included in this  
25 legislation, but I do just want to put it on the

1           table so that we know what topics are relevant that  
2           I'll be talking about through the rest of this  
3           presentation, this briefing.

4           I do want to say I think that, if you look at  
5           the legislation, it really is – it's a reset on  
6           these issues in South Carolina. We've had a  
7           particular way of doing things that reflected an  
8           industry that has – or, that operated one way for a  
9           long time, for a century plus. It is infinitely  
10          more complex; things have changed in a lot of ways.  
11          And then this is the opportunity for South Carolina  
12          to rethink how it addresses everything from avoided  
13          costs to interconnection issues; taking a closer  
14          look at community solar, making sure customers have  
15          access to this resource; dealing with some of the  
16          interconnection challenges that, you know, we  
17          thought we got right in 2015. They worked for a  
18          little while, and now we're running into challenges  
19          that have to be addressed – and the legislation  
20          speaks to that. Dealing with contract terms, how  
21          long contracts should be offered for through PURPA  
22          or through competitive solicitations. And, you  
23          know, we have the lessons learned from Act 236,  
24          now, that I think we should rely on. We saw what  
25          did work; we saw where there are gaps that have to

1 be addressed. And I think this legislation is  
2 intended to do that and sets the stage for that to  
3 be what comes next.

4 [Reference: Presentation Slide 14]

5 So I'll spend a little time getting into more  
6 detail on avoided cost and IRP, as those two  
7 sections of the legislation are intimately  
8 connected. They're also coming up quickly upon us,  
9 especially avoided cost, where an updated  
10 methodology for calculating avoided cost must be  
11 included in the order by this Commission by  
12 November 18th. So that's a fairly short timeline  
13 for a fairly complicated topic.

14 There are a number of methodologies that are  
15 currently on offer: the differential revenue  
16 requirement, DRR, which is currently what Dominion  
17 uses; the peaker method, which is currently what  
18 Duke Energy uses; and then the proxy unit method,  
19 which we're not using in this State today, but is  
20 also available to us.

21 Energy storage, ancillary services are two  
22 issues that we have not addressed in avoided-cost  
23 proceedings that will be new to this Commission and  
24 new to the industry and the utilities in South  
25 Carolina. It'll take us a while to get our heads

1 wrapped around that, I'm sure.

2 South Carolina actually is probably going to  
3 be the first state in the country that requires  
4 ancillary services to be a part of avoided costs,  
5 so those are things like voltage support, frequency  
6 regulation, reactive power, sending price signals  
7 that you do see in some of the deregulated markets  
8 that we'll now have on offer in South Carolina.  
9 And then, within that avoided-cost section of the  
10 statute, there is a requirement that we address  
11 standard offers and form-contract power purchase  
12 agreements, commitment-to-sell forms. My  
13 colleague, Steve Levitas, is going to be speaking  
14 to that in more detail, and giving you some real-  
15 world examples from neighboring states, exactly  
16 what it looks like when the rubber hits the road on  
17 some of those topics.

18 And as I mentioned, contract term lengths.  
19 There's a minimum requirement for utilities to  
20 offer 10-year terms, up to 20 percent of their peak  
21 capacity. The utilities are in different places.  
22 SCE&G/Dominion has much more solar on their South  
23 Carolina system than Duke Energy does at the  
24 moment. And so those – how that will proceed will  
25 maybe not be in lockstep with each other, but what

1 the legislation does direct the Commission to do  
2 is – and it’s a quote – “The Commission is  
3 expressly directed to consider the potential  
4 benefits of terms with a longer duration to promote  
5 the State’s policy of encouraging renewable  
6 energy.” And so, that will also be in front of you  
7 all in the months ahead.

8 [Reference: Presentation Slide 15]

9 Moving to integrated resource planning, as we  
10 just heard in the discussion before this briefing,  
11 this is very new for the State. Our previous  
12 statute had almost no guidance as it relates to  
13 integrated resource planning – a handful of things  
14 that the Commission was required to take into  
15 consideration and do. This is a lengthy part and a  
16 complicated part of the new statute. I think it  
17 reflects best practices across the country and is  
18 going to allow us much more comfort in the  
19 investment decisions that our utilities are making.  
20 And it’s also critical on the avoided-cost front,  
21 ensuring that we have avoided costs that are being  
22 calculated.

23 Just a couple of examples of what’s in here  
24 that we haven’t seen before: Portfolio scenario  
25 modeling, so the utilities will be looking at high

1 renewable energy scenarios, high energy efficiency  
2 scenarios; they'll be doing sensitivity analyses  
3 for things like natural gas pricing; transparency,  
4 so those assumptions, the data that goes into that,  
5 will be available to the parties participating in  
6 those proceedings. Of course, as you know, the  
7 Commission is now going to open those – will open  
8 this up as an actual proceeding, where there will  
9 be intervention and there'll be either approval or  
10 modification or denial at the end of that  
11 proceeding. And then we've got a three-year cycle.

12 Today, we don't have any IRPs filed in the  
13 State that are compliant with the new statute, so  
14 figuring out the timing on that is going to be one  
15 of the tasks in front of you.

16 [Reference: Presentation Slide 16]

17 The reality is all of these things are  
18 interconnected. Starting with IRP and solar  
19 integration, renewable integration, at the front  
20 end, if we're not doing a good job thinking about  
21 what resources are available which are economically  
22 viable and in the best interest of consumers, are  
23 reliable, are safe, then we don't have a foundation  
24 to work from. So getting the IRP right is primary.

25 The solar integration component of this

1           legislation authorizes ORS and the Commission to  
2           initiate a study that looks at exactly what  
3           consideration should be made as we think about high  
4           levels of – or the next level of renewable  
5           integration onto the grid, grid modernization,  
6           integration cost benefits, considerations related  
7           to curtailment, and having a consultant do that  
8           work under the direction of the Commission and ORS,  
9           I think, is going to provide a product that, again,  
10          informs everything that follows.

11                 So avoided cost, as we've already discussed,  
12           is almost completely reliant on the IRP. You've  
13           got to have the IRP – an IRP that you can take  
14           comfort in, find credible, to calculate those  
15           numbers.

16                 How curtailment policies should operate in  
17           this State is going to be informed by that solar  
18           integration study: What can we actually do? How  
19           should the utilities be operating their system in a  
20           way that is consistent with federal law related to  
21           curtailment, and also the decisions made by this  
22           Commission?

23                 PURPA, as you know, depends on avoided cost.  
24           The C&I programs, the voluntary renewable energy  
25           programs that the utilities are required to file

1 within 120 days rely on avoided cost; that will be  
2 the metric for the bill credit. And the net energy  
3 metering, which is not going to come up this year,  
4 I don't think, but next year will be – the baseline  
5 for the value of solar that comes out of those  
6 proceedings is going to be set by avoided cost.

7 And then you also have energy efficiency,  
8 demand-side management. Whether those programs  
9 that are offered up by the utility are cost-  
10 effective or not, avoided cost is the metric that  
11 determines that.

12 Competition, interconnection. Again, this  
13 legislation is driving competition into the market,  
14 sending price signals, allowing us to come in and  
15 compete on cost and value. But if we can't  
16 interconnect to the grid, then we can't deliver  
17 that value. So, interconnection is a big piece of  
18 this.

19 [Reference: Presentation Slide 17]

20 So, how we get there from here is primarily a  
21 procedural question. And I know there's an  
22 advisory council meeting on Friday where some of  
23 that conversation is going to begin. You all have  
24 already been having that discussion with Staff.  
25 And I'd like to just offer some of SBA's thoughts



1 on, in an ideal world, how we see some of this  
2 legislation being implemented.

3 Think technical conferences, where the  
4 Commissioners have the ability to speak directly to  
5 the parties, the interested parties, and Staff,  
6 with the interested parties, on these various  
7 topics of avoided costs, integrated resource  
8 planning, understanding from the folks that were at  
9 the table negotiating the legislation what was  
10 anticipated, and thinking about what best practices  
11 are around the country, so that the schedule – the  
12 considerations made on the front end lead to a  
13 productive docket that produces the results this  
14 legislation contemplated.

15 Docket consolidation. I know you all talked  
16 about this in the briefing a couple weeks ago. I  
17 think there's ample opportunity to consolidate some  
18 of these dockets on the front end, especially as we  
19 talk about issues like methodology, to make sure  
20 we're not duplicating efforts as we go through for  
21 each of the different utilities. And all of this  
22 leads to, in the end, judicial economy and  
23 efficiency. We're making – I think to the extent  
24 that we can make wise use of everyone's resources,  
25 it's a benefit to you all and the parties involved.

[Reference: Presentation Slide 18]

So this is just an example with avoided cost, how we've envisioned what the legislation allows for and what may make sense. As we talk about avoided-cost methodology, there are a handful, as I mentioned, that could be considered. Today we use multiple methodologies in the State. It doesn't necessarily have to stay the same. We can use one methodology for South Carolina, so that we're all operating from the same sheet of music moving forward. And getting the Commission order on an avoided-cost methodology is not the same as getting a Commission order on avoided-cost rates, which is not required by the statute within that timeline.

Of course, the utility compliance filings and then what their rates actually are, it makes sense to, in our minds, continue with a similar process where the utilities have their own dockets and file those rates separately. And the timeline for that, of course, we'd like to see updated rates sooner than later, but there's a little more flexibility built into the legislation.

[Reference: Presentation Slide 19 ]

**COMMISSIONER BELSER:** Mr. Chairman, may I ask a question about the previous slide?

1                   **CHAIRMAN RANDALL:** Sure.

2                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:**

3                   [Indicating.]

4                   [Reference: Presentation Slide 18]

5                   **COMMISSIONER BELSER:** There's a date for the  
6                   order in here. Is that the correct date?

7                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** So, I  
8                   think 11/16 is what I've heard you all speak to as  
9                   the deadline for the avoided costs, that are –

10                  **COMMISSIONER BELSER:** 11/16?

11                  **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:**  
12                  November 16th is what you all, I believe, have –

13                  **MR. MELCHERS:** 18th.

14                  **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** Or the  
15                  18th –

16                  **MR. MELCHERS:** Of November.

17                  **COMMISSIONER BELSER:** Okay. I was thinking  
18                  that was the year.

19                  **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** Oh,  
20                  yeah, sorry. November.

21                  **COMMISSIONER BELSER:** That's what was throwing  
22                  me.

23                  **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** I had  
24                  my girlfriend proof this presentation last night  
25                  and she was like, "That's last year."

1                   **COMMISSIONER BELSER:** That's what I was  
2                   thinking.

3                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:**  
4                   November 18th.

5                   **CHAIRMAN RANDALL:** I'd say we missed that one.

6                   **COMMISSIONER BELSER:** I recall now. Thank  
7                   you.

8                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** Yeah,  
9                   so we don't have to worry about it; the date is  
10                  already passed.

11                  [Laughter]

12                  Sorry for that confusion.

13                  [Reference: Presentation Slide 19]

14                  Sticking with – so, the alternative to not  
15                  doing this in a consolidated fashion is that there  
16                  will be separate utility dockets considering  
17                  different methodologies in each docket, and then  
18                  multiple Commission orders on multiple  
19                  methodologies, and then there's also this kind of  
20                  bogey that's out there, what will happen with  
21                  Santee Cooper. I think it's very likely and the  
22                  political reality is that we're going to have a  
23                  fourth investor-owned utility in the State sooner  
24                  rather than later, and that adds to the complexity  
25                  of implementing this legislation over the longer

1 term, or maybe medium term.

2 [Reference: Presentation Slide 20]

3 And finally, I'm going to can wrap up and hand  
4 this off to Steve Levitas, but I do just want to  
5 illustrate, you know, the magnitude of some of the  
6 consequences that could flow from updated IRPs and  
7 updated avoided costs, et cetera. This was from –  
8 we filed this with the Commission. This was from  
9 Duke Energy's IRP docket, an analysis that we  
10 commissioned last year, 2018, that looked at – that  
11 modeled the Duke Energy system and compared a clean  
12 energy scenario to the Duke-preferred path on IRP,  
13 and revealed that significant – from our analysis –  
14 significant savings could accrue to the tune of  
15 about \$2 billion per year in reduced revenue  
16 requirements under an elevated clean energy  
17 scenario. So the magnitude of change based on  
18 different modeling and different assumptions in a  
19 robust process is significant.

20 **CHAIRMAN RANDALL:** I just wanted to make sure  
21 you know, on our packet of information the  
22 “Successful implementation” slide came up like this  
23 [indicating].

24 **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:**  
25 [Indicating.]

1                   **CHAIRMAN RANDALL:** Yeah. We don't have that.

2                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** I'll

3                   make sure you guys have the correct chart there.

4                   **CHAIRMAN RANDALL:** That'd be cool. Thank you.

5                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** That's

6                   what it looks like [indicating].

7                                   [Reference: Presentation Slide 21]

8                   And just – and so following up on our  
9                   analysis, if you look at other analyses that have  
10                  been done from different entities around the  
11                  country, looking at just this coal question, which  
12                  is primarily where those savings materialize in the  
13                  analysis we conducted on the Duke IRP, is, are  
14                  there cheaper alternatives to running the current  
15                  coal fleet. And here you see a significant amount  
16                  of what these studies term “at-risk coal,” which is  
17                  essentially looking at the margins at which these  
18                  plants operate and comparing them to local  
19                  resources that – or, vetting them against local  
20                  clean-energy resources, based on pricing that's  
21                  actually entered the market, and the differential  
22                  between cost.

23                                   [Reference: Presentation Slide 22]

24                  And, of course, pulling these coal plants off-  
25                  line isn't as easy as just retiring them. There

1 would be some plan that would need to precede this.  
2 And, again, I think that's exactly what this  
3 legislation provides an opportunity to do, is use  
4 IRP, use integration analyses, and really deploy a  
5 more robust, transparent set of regulatory  
6 requirements that allows us to understand what is  
7 the path forward if we're going to – are these  
8 types of savings achievable, and how do we get from  
9 here to there if, in fact, they are.

10 And with that, I'll hand it over to Steve  
11 Levitas. Thank you all.

12 [Reference: Presentation Slide 23]

13 **MR. STEVE LEVITAS [CYPRESS CREEK]:** Good  
14 afternoon, Mr. Chairman, members of the Commission.  
15 It's a pleasure to be back before you today to talk  
16 about implementation of Act 62.

17 What I want to do with my time today is to  
18 share some lessons with you that we've learned from  
19 the implementation of similar programs in my home  
20 state of North Carolina, programs that are similar  
21 to those that are set out in the legislation. And  
22 in doing so, I want to focus on three areas, in  
23 particular: PURPA implementation, competitive  
24 procurement, and the voluntary renewable energy  
25 program.

[Reference: Presentation Slide 24]

So with respect to PURPA implementation, there are two things I'm going to talk about: commercially reasonable contract terms and what's known as a legally enforceable obligation, or LEO.

[Reference: Presentation Slide 25]

Section 58-41-20 of the Code requires South Carolina utilities – as you see in the underlined text here – to have Commission-approved contracts or power purchase agreements not only with respect to the smaller facilities with so-called standard-offer projects, but also with respect to larger QFs. Now, that's a really unusual concept in my experience. In North Carolina and many other states, it's only the smaller QFs that have commission-approved contracts. The theory on that is that these smaller QFs don't have sufficient bargaining power with these large monopoly utilities and, therefore, need a leg up in the form of pre-approvals from the commission, but that, you know, conversely, the idea is that the larger QFs do have that kind of leverage or bargaining power and can fend for themselves. I don't agree with that premise. Working for one of the larger QF developers in the country, I can tell you that a



1 500-person corporation that happens to be in the QF  
2 development business, does not have significantly  
3 greater bargaining power than a much smaller, even  
4 a two-person operation, in negotiating with these  
5 giant monopoly utilities.

6 There's a little bit of negotiation that might  
7 occur with respect to these nonstandard-offer PPA  
8 terms and conditions, but for the most part the  
9 utilities really totally control the process and  
10 they are typically only willing to negotiate on a  
11 very limited extent. And if you reach an impasse,  
12 then you've got to go to litigation, and the  
13 litigation expenses get charged to the project, and  
14 they mount up quickly and have the potential to  
15 make these projects uneconomical, just with small  
16 projects, or with large projects.

17 What we've seen in North Carolina, to give you  
18 an example, is that the utilities have,  
19 essentially, created – again, for these non-  
20 commission-approved forms, and I'm sharing this  
21 with you by way of contrast, because – to explain  
22 why it was important in the legislation that you be  
23 given the responsibility for approving both the  
24 small-facility contracts and the larger ones. In  
25 North Carolina, where there is not that

1 requirement, the utilities have created essentially  
2 their own forms for the larger PPAs. There was  
3 originally some negotiation around those terms. I  
4 was involved with a good bit of it. But now it's a  
5 form, but it's not a commission-approved form; it's  
6 the utilities' unilaterally established form. It's  
7 presented to QFs on a take-it-or-leave-it basis;  
8 there's really no opportunity for negotiation, even  
9 though some of the terms we consider to be  
10 commercially unreasonable. And that,  
11 unfortunately, has created a really problematic  
12 precedent because what was originally done as a  
13 PURPA contract has now been incorporated by our  
14 commission into our competitive solicitation  
15 program, which I'll refer to as CPRE, and also into  
16 our commercial/industrial program, which in North  
17 Carolina is called GSA.

18 [Reference: Presentation Slide 26]

19 Now, not only has the Legislature here, in the  
20 Act, directed you to approve forms for both  
21 purposes, but they've given you very detailed and  
22 complicated direction about how to exercise your  
23 decision-making power under Section 58-41-20 of the  
24 Act. The Legislature said, in your decisions – and  
25 I'm quoting – they said that your decisions “shall

1 be just and reasonable to the ratepayers of the  
2 electrical utility, in the public interest,  
3 consistent with PURPA and the Federal Energy  
4 Regulatory Commission's implementing regulations  
5 and orders, and nondiscriminatory to small power  
6 producers; and shall strive to reduce the risk  
7 placed on the using and consuming public..." end  
8 quote. Well, obviously, that's a mouthful.

9 I would suggest to you, when it comes to  
10 approving contracts, which is one of the things  
11 that you apply that standard to, I think all of  
12 that is really another way of saying that,  
13 consistent with the overarching philosophy of  
14 PURPA, which is all about balancing ratepayer  
15 interests and QF development interests, small power  
16 producers, what they're really saying is that you  
17 should strike a commercially reasonable balance  
18 between the interests of the QFs, on the one hand,  
19 and the interests of the utilities and the  
20 ratepayers, on the other hand.

21 [Reference: Presentation Slide 27]

22 The North Carolina Utilities Commission  
23 explored this issue recently, not just a couple of  
24 weeks ago, in a technical conference, regarding the  
25 design of the second tranche, the second round of

1           our competitive solicitation program, CPRE. And in  
2           that technical conference, one of the utility  
3           lawyers was asked by commission staff, "What does  
4           'commercially reasonable' mean," and responded that  
5           commercially reasonable terms would be those that  
6           are generally used in similar contracts across the  
7           industry. I think that's a pretty good definition;  
8           you look and you benchmark, and you see what other  
9           people are doing, by and large, and that seems to  
10          be a good standard.

11           That has not been the test that has been  
12           applied in North Carolina where there's not been  
13           commission oversight. What we've seen instead is  
14           utilities saying, "Well, if there's been some past  
15           practice of a QF developer, a seller, being able to  
16           get financing for a contract, it must be  
17           commercially reasonable." And those of you who are  
18           practicing attorneys I'm sure know that just  
19           because you can get a deal done doesn't mean it was  
20           a reasonable deal, and I can tell you from  
21           experience that – because I've been there on the  
22           front lines trying to convince financing parties to  
23           accept difficult contract terms, and it's an  
24           extremely difficult process, and I'm sure there's  
25           some people who they see those terms and they just

1 walk away and don't participate or they drive the  
2 cost of the financing up, so, ultimately, not good  
3 for anybody.

4 Just to give you a little sense of what I'm  
5 talking about here, here's an example. Most – I've  
6 worked on power purchase agreements all over the  
7 country. And in my experience, they typically  
8 offer a suite of rights to lenders who have,  
9 typically, debt placed on these facilities. And  
10 like any other debt financing, lenders expect to  
11 have certain rights. A classic example is that a  
12 lender wants to know if there's an event of default  
13 by its borrower, so that it can step in and cure  
14 it, and not lose its collateral because the deal  
15 falls apart. We've seen in North Carolina an  
16 unwillingness to include those kind of standard  
17 lender-rights provisions.

18 Another one that has kind of stuck in my craw  
19 in North Carolina is, the developers have an  
20 obligation to achieve commercial operation by a  
21 date certain, and we have to work, you know, very  
22 hard, and there are significant damages – and even  
23 termination and significant damages – if we fail to  
24 achieve timely commercial operation. And yet we've  
25 seen contracts that don't provide us any relief

1 from those severe sanctions where the failure to do  
2 so was purely due to an act of God, a hurricane, a  
3 tornado, a fire; or even worse, where the delay was  
4 due solely to the utility's actions in failing to  
5 get our projects interconnected in time. And y'all  
6 are familiar with the kinds of delays that we've  
7 seen here in South Carolina on interconnection.

8 So my point is really not to get into the  
9 merits of those individual issues, but give you a  
10 sense that it's a really important issue that is in  
11 front of you to design and approve and carefully  
12 scrutinize these contracts that will be put before  
13 you to make a determination of commercial  
14 reasonableness.

15 [Reference: Presentation Slide 28]

16 Now, the next thing about PURPA implementation  
17 that I want to talk about requires me to give you a  
18 little background on PURPA. I apologize for  
19 being – getting into the weeds on this a little  
20 bit, but it's an important concept that's going to  
21 come before you. And that has to do with the  
22 formation of what's called a legally enforceable  
23 obligation, or LEO. I think maybe in some prior ex  
24 partes, we've talked about this issue. But let me  
25 give you a little background.

1           So, in implementing PURPA, FERC has provided  
2           that a QF can sell its output to the utility  
3           pursuant to a LEO at a fixed long-term rate, and  
4           that's established at the time the LEO is formed.  
5           So this becomes a really critical concept, because  
6           the rates move around over time, so what a LEO does  
7           is fixes the point in time when the QF can lock in  
8           the rate.

9           And here's the interesting part: The QF, under  
10          FERC law, FERC rules and policy, can establish that  
11          LEO by signing a contract – that's what you would  
12          expect – but also by unequivocally committing to  
13          sell its output to the utility. So it can make an  
14          unequivocal commitment – a noncontractual  
15          unequivocal commitment – and when it does that, it,  
16          under FERC precedent, binds the utility to purchase  
17          the output of the QF at the time that that  
18          commitment was made. And just by way of  
19          background, I consider this a fairly unusual – I  
20          call it quasi-contractual. It's not actually a  
21          contract, and I've never seen anything quite like  
22          it in other areas of the law. But the rationale is  
23          FERC was very concerned that these large utilities,  
24          not really wanting to do business with QFs, would  
25          find ways to delay executing contracts, and this –

1 the idea was to put within the utility's control  
2 the ability to bind – I'm sorry – within the QF's  
3 control the ability to bind the utility. And that  
4 becomes especially important when the rates to  
5 which the QF – the QF is seeking are either  
6 declining because market prices are declining, or  
7 there's an administrative proceeding where those  
8 rates are being changed, and you don't want the  
9 utility to be able to game the system in a way that  
10 deprives the QF of a rate that it would otherwise  
11 be entitled to.

12 Now, PURPA has a general philosophy of what's  
13 referred to as "cooperative federalism," which  
14 means there's some broad policy guidance at the  
15 federal level; a tremendous amount of PURPA  
16 implementation, as we've seen from the legislation,  
17 is left to the states to handle. And that's true  
18 with respect to this issue of LEO formation. And  
19 that has resulted in incredible diversity of tests  
20 in the states about what a QF has to do in order to  
21 establish a LEO. And I've been involved in all  
22 kinds of litigation around that; it's a mess. And  
23 I question whether that's a good issue to be left  
24 to the states, but that's an issue for another day.  
25 The good news here is that, in Act 62, your General



1 Assembly effectively made this decision for you, in  
2 that it decided to follow the North Carolina  
3 example for what it takes to establish a LEO. And  
4 you'll see in 58-41-20(D) that what the General  
5 Assembly said is that – it provided for the QF to  
6 form a LEO and bind the utility by tendering what's  
7 referred to as a commitment-to-sell form to the  
8 utility.

9 Now, what you have been tasked with doing is  
10 figuring out what those commitment-to-sell forms  
11 should look like. Presumably, they'll be proposed  
12 by the utilities and you'll have to determine  
13 whether those are reasonable and what they should  
14 look like.

15 Another issue that has been left to your  
16 discretion is determining how long a period of time  
17 the QF should have from the moment that it tenders  
18 that LEO and says, "I want to commit myself to  
19 selling you my power," how long does it have, then,  
20 to sign a PPA, because nobody thinks these things  
21 should go on indefinitely. So I can tell you the  
22 North Carolina Utilities Commission approved a  
23 commitment-to-sell form that gives the QF six  
24 months to sign a contract, once it's been tendered  
25 by the utility. So the QF tenders its commitment-

1 to-sell form; the utility, at its discretion,  
2 provides an executable contract; and the QF has six  
3 months within which to return the executed  
4 contract – with a proviso, which was also included  
5 in your legislation, that the QF can't be required  
6 to sign the PPA before it's received a final  
7 interconnection agreement. And the idea there is  
8 that we've had delays in the interconnection  
9 process; the utility controls that. You don't want  
10 to put the QF in a bind while it's waiting on the  
11 utility to do its job. And the QF has a reasonable  
12 right to know what its interconnection costs are  
13 going to be before it commits itself to damages and  
14 other liability under the PPA.

15 Now, just quickly, getting into the weeds a  
16 little bit further – and I apologize for that, but  
17 this is an issue that I think is important to the  
18 whole concept – I think our commission got  
19 something wrong. They provided that – so the issue  
20 is the QF is going to tender this form, say, "I'm  
21 committed to sell you my power," wait for the PPA,  
22 as I described. And the question is what are the  
23 consequences to the QF if it doesn't sign the PPA  
24 and just walks away? Said it was making a  
25 commitment, but then says, "Just kidding, I'm not

1           going through with this.” And there do need to be  
2           consequences.

3           What I think our commission got wrong in North  
4           Carolina – and I’m not sure how it squared with  
5           PURPA – is the form provides that, if the QF fails  
6           to execute the contract in a timely fashion, it is,  
7           effectively, barred from selling its output to the  
8           utility for a period of two years. And I just  
9           don’t – that seems draconian and hard to  
10          understand. What I’ve said – I’ve repeatedly said  
11          in my negotiations with the utilities and in  
12          various jurisdictions, what I do think has to  
13          happen is you can’t let the QF game the system.  
14          And by that, I mean if the QF says, “I’m ready to  
15          sell you my power at \$50 a megawatt-hour,” and then  
16          it turns out that the power goes to \$55 while  
17          they’re waiting to sell the contract, you don’t  
18          want to let them be able to walk away and then get  
19          the \$55 rate. So we have – I have been an advocate  
20          for the idea that, if you fail to sign, for that  
21          whole life that you are committing – a 10-year  
22          period – you can’t get a better rate than the one  
23          you said, “I’m ready to sell to you at this  
24          number.” I think that’s a fair resolution of the  
25          issue.

[Reference: Presentation Slide 29]

I want to turn to my next topic, which is about competitive solicitation. So, Act 62 authorizes you – it's in 58-41-20(E)(2) – to develop a competitive solicitation program for the procurement of renewable energy.

The last time I was before you, we talked about – I talked about – the merits of competitive procurement programs, and I want to, at the risk of repeating myself a little bit, I want to put this whole issue in context. As you know, South Carolina currently has a system of regulated monopoly – a monopoly generation sector. So, under this system, the generation's traditionally been developed by the utility by seeking approval. They decide what they think needs to be built. They come before you and try to persuade you that that's the correct thing and, if you agree, then they're allowed to recover the cost of those resources through cost-of-service ratemaking. There's currently no economic or policy reason that electric generation, which is not a natural monopoly, should continue to be managed in that outmoded fashion. And, of course, 14 states in the country no longer do it that way. We've seen, with

1 V.C. Summer, it can produce disastrous results; and  
2 more generally, it prevents customers from  
3 realizing the benefits of competition. But  
4 dismantling the current system of regulated  
5 monopolies is an extremely complicated task, and I  
6 am not here to advocate for that. But as long as  
7 we continue to have a system of monopoly-controlled  
8 generation, some form of competitive pressure on  
9 utilities is needed to protect ratepayer interests.

10 PURPA was enacted by Congress to provide  
11 exactly that sort of competitive pressure, and I'm  
12 certainly hopeful that your implementation of Act  
13 62 is going to result in a really robust  
14 development of renewable resources that keep  
15 driving prices lower and lower. But an important  
16 alternative or supplement to PURPA is that  
17 utilities could be charged with procuring – meeting  
18 their identified generation needs through a  
19 competitive process of the sort that's been  
20 authorized here, and that's exactly what we've done  
21 in North Carolina. I want to just share some  
22 experience with you of that.

23 So, we – I think I've previously shared with  
24 you, and you probably know – in 2017, we passed a  
25 landmark piece of energy legislation, not unlike

1           this one, called House Bill 589. And it mandated  
2           that our utilities procure 2660 megawatts of  
3           renewable energy through a new competitive  
4           solicitation program – we call it CPRE – overseen  
5           by the Utilities Commission.

6                               [Reference: Presentation Slide 30]

7           So I want to share a few lessons with you  
8           about our progress, to date, with competitive  
9           solicitation. We are now through the first tranche  
10          of this program. So, under that, DEC procured 515  
11          megawatts of renewables, I think all solar; DEP, 80  
12          megawatts. And there really were a lot of lessons  
13          that we learned and we are learning from those  
14          lessons. So I mentioned the technical conference  
15          that we just had in North Carolina a couple of  
16          weeks ago. Our commission is very actively trying  
17          to figure out how to do a better job of designing  
18          Tranche 2, based on our experience in the first  
19          round. And I think many of these lessons may be  
20          relevant to you as you consider the possibility of  
21          competitive procurement programs here.

22          So, I'm just going to walk through the issues  
23          that you see there on the slide. A key threshold  
24          question that you have to deal with, with these  
25          programs, is whether to allow the utility to

1 compete as a market participant. So, the utility's  
2 the buyer, in a monopoly situation; all the power's  
3 coming through them. But they have nonregulated  
4 affiliates; they also have development activities  
5 of their own. You have a question of are you going  
6 to let them participate as, essentially, a seller  
7 to themselves.

8 Our industry agreed to that in the North  
9 Carolina legislation, but we had a lot of concerns  
10 about it. And what House Bill 589 did was to limit  
11 awards to the utilities to 30 percent of the total  
12 amount, out of the concern that there could be –  
13 the utilities could enjoy an unfair advantage in  
14 the process.

15 But if you're going to allow the utilities to  
16 participate as market participants, I think  
17 everybody agrees, including the utilities, that the  
18 first tranche in North Carolina was successful in  
19 large part because it was administered by a truly  
20 independent third-party administrator, and you see  
21 this with a lot of these programs around the  
22 country. So that's a critical element for you to  
23 think about, but I'll tell you we had to work hard  
24 to get that degree of independence and objectivity.  
25 We had to fight to ensure that the independent

1 administrator controlled the bid evaluation  
2 process, the methodology, the final determinations  
3 of winning bids, and to be sure that we had access  
4 and the ability to comment on the guidelines, the  
5 plan, the pro forma contracts. It all was – it was  
6 a battle, but I think it had a good outcome.

7 Mr. Davis talked about how all this stuff –  
8 all the moving parts here fit together. And  
9 another aspect on the competitive solicitation  
10 program is, if you introduce a new way of procuring  
11 energy, you need to think about how it's going to  
12 interface with your interconnection procedures, and  
13 that was a very challenging issue in Tranche 1.  
14 The utilities wanted to figure out a way that you  
15 could basically take the successful bidders, the  
16 winners, in the competitive process, and kind of  
17 accelerate them through the interconnection  
18 process. They came before you, here in South  
19 Carolina, to ask for dispensation to do that,  
20 because South Carolina projects were able to bid  
21 into the North Carolina competitive process. It's  
22 a complicated and potentially controversial issue  
23 that I just want you to be aware of.

24 Another big issue, a really critical issue in  
25 all this, when the utilities came to the North



1 Carolina legislature and said, "We want to do  
2 things differently," one of the big arguments that  
3 they made was, "We have all these PURPA projects,  
4 and PURPA only gives us limited abilities to  
5 curtail the operation of these third-party  
6 facilities, and we're used to running our own  
7 system and we get to dispatch and curtail however  
8 we want, whatever we think makes the most sense.  
9 We'd like, basically, to be able to operate these  
10 third-party units the same way we operate our own."  
11 And the independent power sector was amenable to  
12 that, but nobody builds infrastructure like this  
13 unless you have certainty about your cash flow.  
14 Certainly, the utilities never build infrastructure  
15 if they don't know they're going to get cost  
16 recovery, and the same is true in the independent  
17 power sector. So everybody understood that, if you  
18 were going to allow greater flexibility on  
19 curtailment, you couldn't have that create  
20 uncertainty for the developers with respect to  
21 their revenues. And the commission took a shot at  
22 how to do that in Tranche 1. I don't think they  
23 got it right. They have it under consideration  
24 now, and basically are looking at some options that  
25 would involve more complete compensation for

1 curtailment events.

2 I've already talked about power purchase  
3 agreements. Just the same point is true here as  
4 with PURPA. They need to be commercially  
5 reasonable.

6 One last point in this area is there are a  
7 variety of concerns, particularly when the utility  
8 is a market participant, about sharing of  
9 information. And our legislation required the  
10 utilities to make information available to other  
11 market participants about, for example, their  
12 transmission system, areas that were most likely to  
13 experience congestion and require network upgrades,  
14 and the most advantageous points of  
15 interconnection, so that you couldn't have the  
16 utility competing with a lot of inside information  
17 that no one else had access to. And that's gone  
18 reasonably well. Still being looked at.

19 So I'm going to try to accelerate through this  
20 last topic –

21 [Reference: Presentation Slide 31]

22 -- and this is the voluntary renewable energy  
23 program under Act 62. So just, again, by way of  
24 background, to explain this program if you're not  
25 all familiar with it, I know you're all aware that

1           there's a huge trend in America among corporate and  
2           institutional and industrial customers to procure  
3           green energy. A huge number of the Fortune 500  
4           companies have made 100 percent clean-energy  
5           commitments. And what comes with that is, and it's  
6           important to economic development in this State, is  
7           they're not going to site new facilities, they're  
8           not going to invest in expanding facilities, if  
9           they've got one of their top corporate goals is  
10          green energy and you can't figure out a way to  
11          satisfy that goal. And the problem is, in a  
12          monopoly-utility state, where they can't purchase  
13          directly from the green energy provider, a  
14          corporate customer's energy profile, their energy  
15          footprint, is exactly that of the utility, because  
16          they're buying all their energy from the utility.  
17          So that may be 30 percent coal, 35 percent gas, 30  
18          percent nuclear, and only 5 percent renewables.  
19          That doesn't cut it for these corporate customers.

20                 But, there's a workaround, and that's the  
21          creation of this type of program. A very similar  
22          program is part of House Bill 589 in North  
23          Carolina. I'm sorry to say that our commission has  
24          taken almost two years to implement that program,  
25          and I hope y'all are going to – I'm confident y'all

1 are going to do better. Because our customers  
2 there are still sitting on the sidelines waiting  
3 for something that they thought they got two years  
4 ago.

5 [Reference: Presentation Slide 32]

6 Now, I hope this is close to the most  
7 complicated slide that's ever presented to you, and  
8 I apologize for that. It is actually prepared by  
9 the Public Staff of the North Carolina Commission.  
10 But I just wanted you to have a little sense of how  
11 these programs work, and this essentially  
12 replicates what your legislation requires –

13 **CHAIRMAN RANDALL:** Before we get into this –

14 **MR. STEVE LEVITAS [CYPRESS CREEK]:** Yes, sir.

15 **CHAIRMAN RANDALL:** – complicated slide, Ms.  
16 Wheat's been talking for about two and a half hours  
17 now; we're going to need to take a little short  
18 break, and then we'll come back and wrap up, okay?

19 **MR. STEVE LEVITAS [CYPRESS CREEK]:** I don't  
20 have much more, but I'll –

21 **CHAIRMAN RANDALL:** Because we've got  
22 questions.

23 **MR. STEVE LEVITAS [CYPRESS CREEK]:** – be happy  
24 to take a break. I'll be quick when we get back.

25 **CHAIRMAN RANDALL:** Okay.

1                   **MR. STEVE LEVITAS [CYPRESS CREEK]:** Okay.

2                   Thank you.

3                   **CHAIRMAN RANDALL:** Great. We'll take five or  
4                   ten minutes, and then we'll finish up. Thank you.

5                   [WHEREUPON, a recess was taken from 3:10  
6                   to 3:20 p.m., during which time a  
7                   complete version of Slide 20 was provided  
8                   to the Commissioners and Staff]

9                   **CHAIRMAN RANDALL:** Please be seated. All  
10                  right. We'll continue. Thank you.

11                  **MR. STEVE LEVITAS [CYPRESS CREEK]:** Thank you,  
12                  Mr. Chairman. I'm going to wrap this up in five  
13                  minutes or less.

14                  I just want to say, on this slide and what  
15                  this illustrates, is that the way these programs  
16                  work is through a three-way relationship. So on  
17                  the left side of that pyramid, the customer, the  
18                  participating customer, is continuing to pay its  
19                  full retail bill. It also, where you see that  
20                  green line where it says – the full retail bill is  
21                  the middle green line, then you see "GSA product  
22                  charge"? That's where it's paying the utility for  
23                  the full cost of the PPA that's been put in place  
24                  on its behalf, so now it's paying twice.

25                  So the key thing that you need to be aware of

1 is – and this is provided for in your legislation –  
2 it pays both those charges, but then it gets a bill  
3 credit that comes back to the customer, and that's  
4 based on the utility's avoided cost. So in order  
5 for – the main thing these customers are trying to  
6 do is get green energy, but they'd also like to  
7 save money or at least not incur higher energy  
8 costs, and the way they do that is, if they can  
9 negotiate a PPA price that is lower than the  
10 avoided-cost rate, then the bill credit that they  
11 get back is more than what they're paying. So  
12 that's just a key concept to be aware of.

13 [Reference: Presentation Slide 33]

14 There are quite a lot of challenges that we've  
15 run into in North Carolina with this program.  
16 That's why it's taken two years to implement. I'm  
17 going to hit these very quickly, just a couple of  
18 issues.

19 [Reference: Presentation Slide 34]

20 I mentioned the program size. In North  
21 Carolina, our program was limited in size. Your  
22 General Assembly elected not to place a statutory  
23 limit and left that to you to decide the  
24 appropriate size of the program. I think you'll  
25 find a lot of appetite.

[Reference: Presentation Slide 35]

Secondly, this is a little bit of a tricky issue. This is the question of however big your program is, how much can each customer have, how much can they participate in, in the program. And the Legislature, as you see here, specifically gave you the authority to limit that but didn't tell you what it should be. But I just want you to be aware of the issue that we grapple with here.

In North Carolina, our program, by statute, only allows the customer to participate up to 125 percent of its peak load. So if you have a customer that's consuming 650,000 megawatt-hours per year of energy, say, it's got a peak load of 100 megawatts, with that limit that means it can have 125 – 25 percent over 100 – of a solar project that it could bring into the program to supply it. But if that 125 megawatt project only delivers – you know, solar doesn't generate all the time; so if it only generates 35 percent of the time, the customer is now getting 400 megawatts – sorry – 400 megawatt-hours, or less than 60 percent of its total, from the clean resource. And so you see the problem that that creates for a Google or Apple or Facebook who says, "We're doing 100 percent clean

1 energy.” Well, if you don’t set the program cap  
2 right, they simply can’t get there.

3 Skip over this next one.

4 [Reference: Presentation Slides 36-37]

5 An issue that you’ll – you’ve already – your  
6 Legislature has addressed here, and it’s been an  
7 issue in North Carolina, is, again, and I mentioned  
8 it in the competitive solicitation program, to what  
9 extent can the utility be a renewable energy  
10 supplier and compete with independent power  
11 producers to serve customers under this program?  
12 Your Legislature answered that question by allowing  
13 utility affiliates, but not the utilities  
14 themselves, to participate.

15 [Reference: Presentation Slide 38]

16 And the last issue I want to touch on is the  
17 most controversial, so I’ll just take a minute  
18 longer with that. And this is the methodology for  
19 calculating that bill credit that comes back to the  
20 customer. I believe, under your legislation, it’s  
21 called a generation credit. And the Legislature  
22 here has said essentially that it’s based on the  
23 avoided cost – that’s the cost that the utility  
24 avoids by being able to utilize the new renewable  
25 energy facility that’s coming on through the



1           program. What caused so much disagreement in North  
2           Carolina was whether – the length of time over  
3           which the avoided cost should be calculated and  
4           whether they should be fixed or variable. And all  
5           the prospective customers – virtually all of them –  
6           argued for long-term fixed bill credits over the  
7           life of the agreement, and they argued that they  
8           needed certainty because, if they didn't have that,  
9           they couldn't know whether what they were signing  
10          up for was a good deal or a bad deal.

11           The commission ultimately – a divided  
12          commission; it's one of the few decisions since  
13          I've been working in front of the North Carolina  
14          Commission where there was a dissent. It was a  
15          divided commission, but ultimately approved two  
16          options: a variable bill credit linked to market  
17          prices, and a fixed five-year credit. So what that  
18          means is that, if a customer in this program signs  
19          up for a 10-year contract or a 20-year contract – I  
20          was with a customer yesterday; they said, "We want  
21          a 30-year contract." Well, North Carolina law  
22          doesn't allow for it. But these customers want to  
23          make long-term commitments, but if they don't know  
24          what their bill credit is, they have no way of  
25          knowing what their costs are going to be after the

1 initial bill credit expires.

2 So there's been a lot of prediction that there  
3 won't be full subscription of the North Carolina  
4 program because of this problem with the bill  
5 credit. We'll see how that goes in the coming  
6 months; and if it doesn't work out, I'm sure the  
7 commission and the legislature will revisit it.

8 So I appreciate your attention. I'm sorry to  
9 run a little long, there. That's the end of my  
10 prepared presentation, and we'd love to take your  
11 questions.

12 **CHAIRMAN RANDALL:** Thank you. There's lots of  
13 information. We've been working on Act 62 for a  
14 couple of weeks now, since we've gotten into it, so  
15 we appreciate all of you being here today.

16 Commissioners, any questions? Commissioner  
17 Williams.

18 **VICE CHAIRMAN WILLIAMS:** Thank you, Mr.  
19 Chairman. Just a few questions.

20 Gentlemen, thank you for being here today.  
21 Mr. Sowers, you mentioned that diversity was an  
22 important issue for your group. I was wondering  
23 what measures have you implemented to address  
24 diversity issues?

25 **MR. BRET SOWERS [SOUTHERN CURRENT/SC-SBA]:**

1 Sure. So, most of us – we have a national  
2 organization called SEIA, is the acronym. Solar  
3 Energy Industries Association. We also work with  
4 another nonprofit organization called the Solar  
5 Foundation where, for the last five years, we've  
6 been monitoring this and supplying data to them to  
7 help us understand what is the diversity. I mean,  
8 over 150,000 workers. Who are those workers? And  
9 what are community colleges doing?

10 So I actually think Steve's company, Cypress  
11 Creek Renewables, made a donation I believe to  
12 Greenville Technical College, that was stunted  
13 towards helping its diversity in its workforce as  
14 we're coming into the State, and making sure we're  
15 training folks to come in, and have an eye towards  
16 making sure we're representing the American  
17 populace and that we're not, you know, being  
18 ignorant to an engineering stint, or otherwise. We  
19 have to reach out. We've had this issue in the  
20 General Assembly, as well, Commissioner, where  
21 we're not doing a good enough job seeking out a  
22 diverse workforce. It's a friend or family of an  
23 existing worker, and that's typically how us  
24 smaller companies have grown. Now that we're, at  
25 Southern Current, 130 employees, you know, we have

1 an HR person for the first time, and these are  
2 things that we're starting to monitor.

3 As an industry, you know, we're relying  
4 heavily on our national organizations to help drive  
5 us in that direction. We're small businesses, and  
6 we struggle with employees generally on how to  
7 retain and attract. So I hope that's providing  
8 some color. And it's a recently, I would say, new  
9 objective or priority in this past, really, two  
10 years for the industry.

11 **VICE CHAIRMAN WILLIAMS:** Thank you, Mr.  
12 Sowers. And I want to be clear, I'm not here to  
13 make any judgments as to where you are on the  
14 diversity issue. Just curious, since you brought  
15 it up. I'm wondering, does your company track  
16 employee demographics?

17 **MR. BRET SOWERS [SOUTHERN CURRENT/SC-SBA]:** We  
18 are starting to now, I think as of three months  
19 ago.

20 **VICE CHAIRMAN WILLIAMS:** Okay, sounds good.  
21 Thank you for sharing that information with the  
22 Commission today.

23 Moving right along, Mr. Davis, you said you  
24 spent the last 365 days working on this  
25 legislation. Is that right?

1                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** It is.  
2                   The conversation really began in earnest last  
3                   summer when ORS put the Act 236 2.0 stakeholder  
4                   process in place, and so that was when we started  
5                   getting into a lot of these details. And then, of  
6                   course, once the legislative session started in  
7                   January, it was pretty nonstop until the bill  
8                   actually passed.

9                   **VICE CHAIRMAN WILLIAMS:** Understood. Well,  
10                  congratulations. There seems to be a lot of  
11                  excitement around this legislation. I just have a  
12                  couple of questions for you. Considering your  
13                  experience and the time you spent with the law, do  
14                  you see any potential pitfalls that we're not  
15                  seeing right now due to all the excitement?

16                  **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** In  
17                  terms of drawbacks, like unintended consequences,  
18                  or –

19                  **VICE CHAIRMAN WILLIAMS:** Yes, sir.

20                  **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** I  
21                  mean, I think the biggest risk is that, because  
22                  it's complicated and because it's so new for this  
23                  Commission and a lot of the parties involved, that  
24                  we don't take the time on the front end to think  
25                  about what exactly is the – you know, procedural

1 process for this is very important, and so that we  
2 get a good product. And it's – you know, I  
3 mentioned the technical conferences as an  
4 opportunity to have everybody in the room thinking  
5 through implementation at the same time, so that  
6 that is a – I think if we don't stop to breathe and  
7 understand it well, then we may walk down an  
8 implementation path that either gets us status quo  
9 or, you know, I don't know what those unintended  
10 consequences could be. But certainly, just due to  
11 the complication of it, if we don't implement it  
12 correctly, then I'm sure there will be some.

13 **VICE CHAIRMAN WILLIAMS:** Thank you. I  
14 appreciate you sharing that. One final question  
15 for me. I understand, as a general economic  
16 principle, that competition in the market usually  
17 provides better prices for customers. How would a  
18 ratepayer, who is not interested in purchasing  
19 solar panels or participating in any type of solar  
20 program, but just comfortable with the status quo –  
21 they just want the lights to come on when they flip  
22 the switch – what benefit would they receive from  
23 this new law?

24 **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** So, I  
25 mean, I think, again, from a competition

1           standpoint, if we are sending accurate price  
2           signals to the marketplace, then you've got a  
3           series of players – you've got solar developers,  
4           you've got folks in the energy efficiency world,  
5           and then, of course, you have utilities that are  
6           all fighting for that market share. And as they're  
7           competing, you're driving those: Who can do that  
8           the cheapest? Who can provide the lowest-cost  
9           kilowatt-hour? And the consumer is going to be the  
10          beneficiary of that. So, I mean, I think it is, to  
11          a large extent, just that competitive environment  
12          and that consumer choice environment, so that we  
13          actually understand what customers want and then  
14          you send the market signals and let the developers,  
15          utilities, and others compete to provide those  
16          services.

17                I mean, as you know, the legislation does  
18                speak directly to things like community solar, and  
19                we'll be having an updated net metering discussion,  
20                and solar leasing, so there's opportunities for  
21                folks to directly benefit, But I think, given the  
22                trends in the clean-energy world where you see  
23                declining price curves and the ability to hedge  
24                against things like fuel uncertainty related to  
25                natural gas, and you create a competitive platform

1 for folks to go compete it out, you get lower cost  
2 at the end of the day, and we've seen that in the  
3 deregulated markets to a large extent, as well.

4 **VICE CHAIRMAN WILLIAMS:** So is your  
5 testimony – just to clarify – your testimony that,  
6 if we get this right, if we implement this new law  
7 correctly, it will drive down the cost of energy in  
8 South Carolina?

9 **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** As  
10 compared to what it would otherwise be. And in  
11 general – in the short term, I think it will drive  
12 cost down. In the longer term, it's hard to know,  
13 you know, where these trends head. But in a  
14 competitive environment, you're going to have lower  
15 costs than you otherwise would.

16 **VICE CHAIRMAN WILLIAMS:** Thank you for  
17 sharing.

18 **MR. STEVE LEVITAS [CYPRESS CREEK]:** If I might  
19 follow up on that, with respect to PURPA, as  
20 opposed to some of these other programs, it may not  
21 be immediately obvious how the competitive pressure  
22 in PURPA works – I just want to take a minute and  
23 explain that – because the PURPA mandate is that  
24 the utility buy power from an independent power  
25 producer, a QF, if the QF can meet its price.



1           So you buy at the price that the utility would  
2 otherwise incur, and you might say, "Well, where's  
3 the cost savings? You know, you're just shifting  
4 from one source to another." But the answer to  
5 that is, these utilities badly want to hold market  
6 share. They don't want QFs coming in and taking  
7 their business away because they can meet their  
8 price. So what do they do? They need to innovate.  
9 They need to drive their price down. If they drive  
10 their price – you create competition that doesn't  
11 otherwise exist in a noncompetitive market because,  
12 in order for the utility to hold market share, it's  
13 got to figure out how it can do a better job than  
14 the QF and figure out how to generate and deliver  
15 energy at a cost that the QF can't match. That's  
16 where the competitive pressure comes from under  
17 PURPA.

18           **VICE CHAIRMAN WILLIAMS:** And you've peaked my  
19 interest, sir. So, in that scenario, if the  
20 utility were to do that, would it put the QF out of  
21 the business? If the utility committed to  
22 innovation in a way where its price was lower than  
23 the QF and the QF determines, "This is not – it's  
24 not economical for us to be in this business  
25 anymore," what happens to all the infrastructure?

1                   **MR. STEVE LEVITAS [CYPRESS CREEK]:** Well, so,  
2                   as with the utilities, what's in the ground, the  
3                   existing contracts are contracted to sell at a  
4                   certain price, so we wouldn't be talking about  
5                   those. But if the utility could figure out how to  
6                   generate energy cheaper than we can, then  
7                   eventually you're not going to see QFs being able  
8                   to – they will have succeeded in the competitive  
9                   arena, as opposed to just having everything locked  
10                  up. And, you know, until relatively recently, the  
11                  last decade or so, renewables couldn't compete in  
12                  this market. They couldn't compete under PURPA,  
13                  and no solar was built. And then what happened is  
14                  a lot of innovative people went out and figured out  
15                  how to drive the cost of solar down to the point  
16                  where they could compete. So that creates exactly  
17                  what you want to see in a competitive market, which  
18                  is the utilities have to go and try to invent a  
19                  better mousetrap. And if they do that, then we've  
20                  got to do the same thing and try to do it even  
21                  better, so that we can take the business. So I  
22                  think that's how the American economy is supposed  
23                  to work.

24                  **MR. BRET SOWERS [SOUTHERN CURRENT/SC-SBA]:**  
25                  Commissioner, if I could, I think, as I've watched

1 and been intimately involved, of course, in the  
2 energy conversation in South Carolina, risk is a  
3 huge benefactor. With price all the same, as we  
4 saw with V.C. Summer, who bears the cost? And so,  
5 from an independent power perspective, the  
6 developer bears the cost. We put at-risk capital  
7 into the market to develop, finance, permit, go  
8 through all of the due diligence hurdles that a  
9 utility would, as well, only we're not under a  
10 cost-of-service business model.

11 So, you know, we make money on energy sold,  
12 not on plants built. So it's a much different  
13 business model and so, as a consumer, even if price  
14 is the same, which is the least-risk kilowatt-hour  
15 coming to you, and long-term maintenance – who  
16 bears that? So the business models are completely  
17 different.

18 Even if I were to go build a new natural gas  
19 plant as adverse to a cost-of-service utility-built  
20 natural gas plant, I'm developing that at my own  
21 risk capital and not the ratepayers'. The O&M  
22 costs are borne by the developer and the owner of  
23 that plant. And so the ratepayer is not having to  
24 pay that. And in the case of V.C. Summer, if  
25 something doesn't get built or becomes

1           uneconomical, back to one of the slides we had  
2           earlier of the uneconomical coal plants, who's  
3           paying for that? And it's not always a direct who-  
4           can-deliver-the-lowest-kilowatt-hour; it's also who  
5           can deliver the lowest kilowatt-hour with the least  
6           amount of risk to the ratepayer.

7           **VICE CHAIRMAN WILLIAMS:** Thank you, gentlemen.  
8           I really appreciate your commentary. And I guess  
9           it's fair to say: May the Hunger Games begin.

10           [Laughter]

11           **MR. STEVE LEVITAS [CYPRESS CREEK]:** Thank you.

12           **CHAIRMAN RANDALL:** Thank you.

13           Commissioners. Commissioner Whitfield.

14           **COMMISSIONER WHITFIELD:** Mr. Chairman, thank  
15           you.

16           I have one question for you, and hopefully you  
17           can answer it shortly, in a short and succinct  
18           manner, but it's kind of complicated. Following up  
19           where Commissioner Williams was going, and to be  
20           real specific to South Carolina – I guess, Mr.  
21           Davis, it might be directed at you, although Mr.  
22           Levitas, you talked a lot about North Carolina –  
23           specifically the Section 58-41-20(D), where you  
24           talked about – you and Mr. Levitas talk about  
25           implementing, or a quasi-contract or executed

1 notice of commitment to sell to the utility, under  
2 PURPA, and within six months, they're required to  
3 execute a PPA, a purchased-power agreement. Is  
4 that the way it works in North Carolina and is that  
5 the way – how do you envision that working here in  
6 South Carolina? And to go a little further, to  
7 Commissioner Williams, what he said, what if the  
8 utility has innovated in that time, and the QF is  
9 now not the least-cost? I mean, how do you think  
10 58-41-20(D) is – how did it work in North Carolina  
11 and what do you envision here?

12 **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** Yeah,  
13 Steve, why don't you – you're much more familiar  
14 with the North Carolina environment.

15 **MR. STEVE LEVITAS [CYPRESS CREEK]:** Thank you  
16 for the question. As I mentioned, the North  
17 Carolina commitment-to-sell form does require that  
18 the PPA be executed in six months. But your  
19 Legislature left it to you to decide what an  
20 appropriate reasonable time is. The six months is  
21 not in the statute; it says you'll provide that it  
22 be executed in a reasonable period of time.

23 You have – a fundamental concept with the LEO  
24 is the notion that a QF has got to be able to lock  
25 in rates at some point, in order to do all of its

1 development planning. Just like the utilities do.  
2 When the utilities go to build something, there's a  
3 point in time they come before you, they need to  
4 know that they're going to be able to recover the  
5 costs that they present to you. And things are  
6 going to change over time. So the whole idea of  
7 the LE0 is to lock in a price for a reasonable  
8 period of time, knowing that the prices could go  
9 up, prices could go down. And FERC has said that's  
10 going to even out.

11 So to answer your question, yeah, there could  
12 be a scenario where the price has been locked in –  
13 just as after you've executed a contract. You  
14 execute a 10-year contract, and who knows what  
15 happens in year eight. It could've been a great  
16 deal; it could've been a bad deal. But that's just  
17 the nature of the infrastructure business, that you  
18 make the best judgment that you can at the time,  
19 based on the information that's in front of you.

20 So, yes, that's why the six months – I think  
21 the North Carolina Commission thought that was a  
22 reasonable period, and if you can't get your  
23 contract executed in that period of time, then you  
24 need to form a new LE0 and start over.

25 **COMMISSIONER WHITFIELD:** Thank you.

1                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** Just  
2                   to quickly follow up on that, I mean, I think  
3                   that's – you know, that type of concern is what the  
4                   statute envisions and why the level of transparency  
5                   and accountability that goes into things like  
6                   setting avoided-cost rates, updating integrated  
7                   resource plans, is that we want to be operating  
8                   from the best information possible. So yes, things  
9                   change. But, you know, at any given moment in time  
10                  in South Carolina we want to have a price signal  
11                  that's as close to accurate as you can be, given  
12                  the uncertainties that we all operate with.

13                **COMMISSIONER WHITFIELD:** Mr. Davis, I'm going  
14                to put you on the spot. What's your opinion of a  
15                reasonable period of time? Six months like North  
16                Carolina? Or what do you –

17                **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** That's  
18                not my responsibility in the company, but my  
19                understanding is –

20                **COMMISSIONER WHITFIELD:** Right.

21                **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** – the  
22                North Carolina model is something that has  
23                essentially worked from the timing perspective.

24                **MR. STEVE LEVITAS [CYPRESS CREEK]:** [Nodding  
25                head.]

1                   **COMMISSIONER WHITFIELD:** Thank you.

2                   That's all I have, Mr. Chairman.

3                   **CHAIRMAN RANDALL:** Thank you.

4                   Commissioner Ervin.

5                   **COMMISSIONER ERVIN:** Thank you for being with  
6                   us today. It's been very informative and I  
7                   appreciate your attendance.

8                   **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:**  
9                   Hopefully not too informative.

10                  [Laughter]

11                  **COMMISSIONER ERVIN:** Tell me about – what is a  
12                  community solar program? What exactly does that  
13                  entail?

14                  **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** It's  
15                  essentially an option that a customer, whether it's  
16                  a church or a school or a resident of South  
17                  Carolina that can't put solar on their premises for  
18                  some reason, whether they don't have the roof for  
19                  it or they don't like the way it looks – it's an  
20                  opportunity for them to invest in this resource and  
21                  presumably achieve some sort of savings. I mean,  
22                  ideally, you want these programs designed in a way  
23                  that a customer has access and the same types of  
24                  benefits that maybe would accrue if they put solar  
25                  on their rooftop, but basically tap into the



1 economic advantages of the technology.

2 There are a number of different models for  
3 that. The C&I program's model actually is one that  
4 could work for the community solar approach, and I  
5 expect that folks will be bringing different ideas  
6 to the table as we get into those dockets.

7 **COMMISSIONER ERVIN:** How has North Carolina  
8 developed that out?

9 **MR. HAMILTON DAVIS [SOUTHERN CURRENT]:** I  
10 don't think that North Carolina – I don't think  
11 North Carolina has struck a successful model.  
12 South Carolina – Duke and SCE&G both have had  
13 successful programs in South Carolina that I  
14 believe are fully subscribed now, but they were  
15 successful in that window of time after Act 236 was  
16 passed.

17 **MR. STEVE LEVITAS [CYPRESS CREEK]:** And I  
18 would just add to that, Commissioner Ervin, that  
19 the legislation in North Carolina provided for a 40  
20 megawatt pilot community program with very little  
21 statutory meat on the bones, and I think most of  
22 the industry said 40 megawatts is not worth messing  
23 with. There have been a lot of successful  
24 community solar programs around the country, in  
25 Minnesota, and Colorado, I think, Oregon, Illinois,

1 in the Northeast. So there are a lot of models to  
2 choose from.

3 **COMMISSIONER ERVIN:** In terms of promulgating  
4 forms as required by the new law, do you think that  
5 a good starting point would be the North Carolina  
6 forms that are already – you're familiar with? I  
7 mean, is that a good starting point?

8 **MR. STEVE LEVITAS [CYPRESS CREEK]:** I think  
9 so. I think they're generally good forms. I  
10 mentioned a couple of things that we've had  
11 problems with. And I don't know that you need to  
12 reinvent the wheel. Frankly, in case of Duke,  
13 which does business in both states, they've already  
14 been using those forms to some extent in South  
15 Carolina. So I've done a lot of work on those over  
16 the years; there's a lot of good there, just some  
17 things that I think could use some tweaking.

18 **COMMISSIONER ERVIN:** Thank you.

19 **CHAIRMAN RANDALL:** Thank you.

20 Commissioners, anything else?

21 [No response]

22 Okay. Gentlemen, thank you very much for  
23 being here.

24 Mr. Whitt, thank you. Have you got anything?

25 **MR. WHITT:** I just want to conclude by saying

1           thank you to you and the members of the Commission.  
2           Thank you for your questions and your time. We  
3           appreciate it.

4           **CHAIRMAN RANDALL:** Great. Thank you. That  
5           was very informative, a lot of – we’re getting a  
6           little bit of – with this new legislation and with  
7           all it entails, there’s a little bit of information  
8           overload at times, and we’re dealing with it and  
9           working hard on it. So, thank you very much. This  
10          was very informative and very helpful, this  
11          afternoon, so thank you.

12          **MR. STEVE LEVITAS [CYPRESS CREEK]:** And you  
13          may not realize it, but someday you’re going to be  
14          glad you have that slide.

15                               [Laughter]

16          **CHAIRMAN RANDALL:** There you go. I’m glad. I  
17          got it, and I put it in the right place, too.

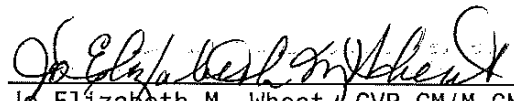
18          Thank you, very much. We are adjourned.

19                               [WHEREUPON, at 3:45 p.m., the proceedings  
20                               in the above-entitled matter were  
21                               adjourned.]

C E R T I F I C A T E

I, Jo Elizabeth M. Wheat, CVR-CM-GNSC, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of all the proceedings had regarding a requested allowable ex parte briefing in the above-captioned matter before the PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA;

IN WITNESS WHEREOF, I have hereunto set my hand and seal, on this the 14<sup>th</sup> day of June, 2019.

  
Jo Elizabeth M. Wheat, CVR-CM/M-GNSC  
Hearings Reporter, PSC/SC  
My Commission Expires: January 27, 2021.